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FILED
OCT 29 1954
HAROLD B. WILLEY, C

IN THE

Supreme Court of the United States

October Term, 1954
No. 344

JAMES A. VAUGHAN,

Petitioner,

v.

PETROLEUM CONVERSION CORPORATION, Bankrupt, and WILLIAM DUFFY, JR., Trustee in Bankruptcy,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

REPLY BRIEF

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The statement on page 1 of respondents' brief that "* * * the subject matter and the substantial questions involved here are the same as were involved in the former petition", in No. 395 October Term 1952, is misleading.

The challenge of the Delaware referee's power to assume and exercise summary jurisdiction, after he undeniably determined and ruled at the beginning of proceedings before him that he lacked jurisdiction over the subject matter, is common to both the former and the present petitions. For the reason that the referee concealed his initial non-jurisdiction rulings of record, by omitting them from his findings, conclusions and opinion, the only way your petitioner had to bring them to the attention of the Delaware District Court on review and the Court of Appeals for the Third Circuit on appeal was by briefs and by argu-

ment. But to the Delaware District Court the mandate of Rule 12(h)(2) of the Rules of Civil Procedure was "not important here" and the Third Circuit ignored the mandate.

However, in his independent action in the Connecticut District Court pursuant to the provisions of Rule 60(b)-(4)(6) asking relief from the Delaware referee's judgment, by injunction, your petitioner pleaded, (1) the Delaware referee's non-jurisdiction determination and rulings—the facts of record, and (2) the facts of record with respect to the stale issue raised in the trustee's counterclaim, and as defined by the referee, viz., that your petitioner served interests adverse to the bankrupt in the protracted *Dickinson* v. *Rinke* litigation.

By virtue of the jurisdiction duplicity exercised by the Delaware referee, first disclosed when he handed down his findings, conclusions and opinion, there was no prior opportunity to bring such facts before the Court. They were accordingly first presented in your petitioner's verified complaint in his action in the Connecticut District Court.

Your petitioner's complaint in the Connecticut District Court raises questions of both fact and law. For purposes of respondents' motion to dismiss, the allegations of the complaint are, by the accepted and usual course of judicial proceedings, treated as true. Both the Connecticut District Court and the Court of Appeals for the Second Circuit, however, wholly ignored the Delaware referee's non-jurisdiction rulings of record and the facts of record pertaining to the stale issue raised in the trustee's counterclaim, as set forth in your petitioner's complaint.

The fundamental principle here involved is not that two District Courts and two Courts of Appeals have "agreed" with the Delaware referee, but it is that two District Courts and two Courts of Appeals should stamp with approval the

undenied jurisdiction duplicity assumed and exercised by the Delaware referee contrary to the clear mandate of Rule 12(h)(2); that they should disregard the rule of this Court in *Cline* v. *Kaplan*, generally followed except in the Third Circuit, and in full force throughout the litigation in this case.

Your petitioner believes he is entitled, on the facts in this case, to the benefit and protection of the applicable Rules and decisions usually employed in the ordinary course of judicial proceedings and therefore respectfully prays that his petition herein be granted.

JAMES A. VAUGHAN, *pro se*,
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Dated: New York, New York, October 28, 1954.

Proof of Service

I, JAMES A. VAUGHAN, a member of the Bar of the Supreme Court of the United States hereby certify that on the 28th day of October 1954, I served copies of the foregoing Reply Brief on the trustee in bankruptcy of Petroleum Conversion Corporation, bankrupt, by depositing same post wrapped in the United States Post Office at 90 Church Street, New York, New York, with first class postage prepaid, addressed to his counsel, Morgan P. Ames, Esq., No. One Atlantic Street, Stamford, Connecticut.

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